

1 know, cash was not available to the patients, since no one was  
2 at my home, the collect call could not be -- you have to be  
3 there to have somebody accept a collect call to go collect,  
4 but on my mother's phone bill it does register the call  
5 itself.

6 JUDGE MILLER: That August 31st -- I mean, that  
7 May 31st call?

8 MR. FREEMON: Yes.

9 JUDGE MILLER: It doesn't -- it's on her bills,  
10 okay.

11 MR. FREEMON: Yeah.

12 JUDGE MILLER: No problem, did you prepare the  
13 original complaint, Mr. Freemon?

14 MR. FREEMON: Yes.

15 JUDGE MILLER: Now, let me give you the reason that  
16 I had to ask that question. In your original complaint -- let  
17 me make sure I have the right document. In your original  
18 complaint, at page 3, paragraph 3, you make reference to the  
19 Portland Seventh Day Adventist Hospital, you see that?

20 MR. FREEMON: Page 3 --

21 JUDGE MILLER: I'm talking about your complaint that  
22 was filed on August 16, 1990.

23 MR. FREEMON: Oh, yes.

24 JUDGE MILLER: You see that?

25 MR. FREEMON: It's Portland Seventh Day Adventist

1 Hospital.

2 JUDGE MILLER: Right, and on -- let's see, May 21,  
3 1989 -- attached to that original complaint is a letter to  
4 Mrs. Maola Brown which bears your signature, did you prepare  
5 that document?

6 MR. FREEMON: Okay, what date?

7 JUDGE MILLER: May 21, 1989.

8 MR. FREEMON: Okay, May --

9 JUDGE MILLER: It's a letter addressed to  
10 Mrs. Maola Brown, Carrier Analyst, Dear Mrs. Maola Brown, and  
11 it's on page 5 --

12 MR. FREEMON: May 21st, yes.

13 JUDGE MILLER: -- a 5-page document on the page --  
14 on the fifth page -- mine is not real legible but it looks  
15 like your signature.

16 MR. FREEMON: My -- oh, yes, okay.

17 JUDGE MILLER: Did you prepare that document?

18 MR. FREEMON: Yes, I did.

19 JUDGE MILLER: Now, you know, in paragraph 2,  
20 there's a reference to the Seventh Day Adventise Hospital, is  
21 it just a spelling error?

22 MR. FREEMON: Yes, I have to find it first, it's the  
23 second quest -- page 2 of -- I'm sorry, page 2 --

24 JUDGE MILLER: Page -- the first page of a letter  
25 dated May 21, 1989, it's probably attached to your original

1 complaint.

2 MR. FREEMON: There is it, I see it, it is a --

3 JUDGE MILLER: You find it?

4 MR. FREEMON: It's a typo error.

5 JUDGE MILLER: All right --

6 MR. FREEMON: May I make a comment?

7 JUDGE MILLER: Yes.

8 MR. FREEMON: The first part of -- if you notice

9 there's -- well, the first --

10 JUDGE MILLER: Yes, I do notice.

11 MR. FREEMON: I'm sorry.

12 JUDGE MILLER: Go ahead, so you can explain it.

13 MR. FREEMON: The first part of the formal complaint

14 was assisted by my sister in the typing, she's a professional

15 typist.

16 JUDGE MILLER: Which sister?

17 MR. FREEMON: Evelyn, she's my --

18 JUDGE MILLER: Okay.

19 MR. FREEMON: So it's a mix, the next one that I

20 sent was mine, that's why there's a typing difference.

21 JUDGE MILLER: I see, all right.

22 MR. FREEMON: There was -- she corrects things and

23 she helps me out but in this one I pretty much did this one on

24 my own.

25 JUDGE MILLER: All right, did you have any comments

1 regarding paragraph 3, Mr. Jacoby?

2 MR. JACOBY: The paragraph then is the Oregon user,  
3 Your Honor?

4 JUDGE MILLER: No, no, no, I'm talking about --

5 MR. JACOBY: Oh, the Brown the letter, I'm sorry.

6 JUDGE MILLER: On the pre-hearing order, I'm just  
7 talking about the pre-hearing order.

8 MR. JACOBY: Oh, I apologize, Your Honor, I'm still  
9 looking at the complaint and answer. No, Your Honor, we have  
10 no comments with respect to that.

11 JUDGE MILLER: All right, paragraph 6 deals with  
12 bifurcation, in the interest of getting the case over, the  
13 trial Judge elected not to bifurcate so the Freemons were  
14 charged with assuming both their burden of proceeding and the  
15 burden of proof on the -- both the liability and the damages  
16 aspect, you -- you're aware of that aren't you,  
17 Mr. Elehue Freemon?

18 MR. FREEMON: Yes.

19 JUDGE MILLER: You read that paragraph, didn't you?

20 MR. FREEMON: Yes.

21 JUDGE MILLER: You understand it?

22 MR. FREEMON: Yes.

23 JUDGE MILLER: All right, paragraph 7 of the pre-  
24 hearing order gives you people the opportunity to ask any  
25 clarification questions you want to ask at this stage or make

1 any clarification request you wish to make, do you have any  
2 clarification questions Mr. Elehue Freeman?

3 MR. FREEMON: No.

4 JUDGE MILLER: I can't ask Lucille K. Freeman, she  
5 isn't here, AT&T?

6 MR. JACOBY: No questions, Your Honor.

7 JUDGE MILLER: Paragraph 8 through 10 deal with  
8 discovery. Discovery was to have been completed by  
9 November 7, 1994, do you see that?

10 MR. FREEMON: Yes.

11 JUDGE MILLER: Yes -- have you completed your  
12 discovery, Mr. Freeman?

13 MR. FREEMON: I did send a order to complete my  
14 discovery of production of documents, other than that, yes.

15 JUDGE MILLER: Well, we'll get to that, it's time to  
16 get to that. I have before me a motion to compel the  
17 production of documents filed by Elehue K. Freeman on  
18 November 8, 1994 and I also have a response to complainant's  
19 motion to compel production of documents filed by AT&T on  
20 November 9, 1994. If you don't -- if you have any doubts  
21 about it I can show you the official stamp.

22 MR. FREEMON: It said -- sorry, it says --

23 JUDGE MILLER: It says November 8, 1994. Now, I  
24 have both these documents before me and I now will make a  
25 ruling. Those two pleadings are dismissed. Now, I'm going to

1 | tell you why. Discovery -- first, discovery was to have been  
2 | completed by November 7, 1994, it's late. Secondly, you have  
3 | a full 60 days to get your discovery completed, you didn't do  
4 | it. The purpose of document production is to obtain documents  
5 | you could use in the presentation of your direct case.  
6 | Exchanges of direct case is today, what use are you doing,  
7 | what use is it, this pleading you filed. Fourth, you attended  
8 | Nancy Zolnikov's (Phonetic) deposition, you have the  
9 | opportunity to obtain a lot -- most of that information that  
10 | is subject to that motion to compel so as far as I'm  
11 | concerned, the motion is not needed. I am not ruling on the  
12 | merits of the request. I will confirm this ruling in writing.  
13 | Now, other than that, you have no -- you've completed your  
14 | discovery, Mr. Freemon?

15 |               MR. FREEMON: Yes.

16 |               JUDGE MILLER: Can't ask Lucille K. Freemon, she  
17 | isn't here. Mr. Jacoby, have you completed your discovery?

18 |               MR. JACOBY: Yes, we have Your Honor, as you pointed  
19 | out, Mrs. Zolinkov's deposition was taken pursuant to our  
20 | notice on this past Monday, her transcript has been prepared,  
21 | the witness has reviewed it, it has been signed, certified and  
22 | filed with the Commission so with those steps taken, we have  
23 | completed all of our discovery work preparatory to this  
24 | conference.

25 |               JUDGE MILLER: All right, and you have -- and you've

1 completed your earlier discovery which you initiated right off  
2 the bat.

3 MR. JACOBY: The depositions of Mr. Freemon and  
4 Mrs. Freemon and the document production request that was --  
5 yeah, filed.

6 JUDGE MILLER: All right, now, with that are there  
7 any other discovery problems we need to cover at this  
8 conference?

9 MR. FREEMON: Not for myself.

10 MR. JACOBY: Not that I'm aware of, Your Honor.

11 JUDGE MILLER: All right, paragraphs 11 through 13  
12 settle -- set up the pre-hearing settlement procedures, and my  
13 record shows that -- with my permission, Elehue K. Freemon and  
14 AT&T had a telephone settlement conference on October 24, 1994  
15 and I've also received the October 31, 1994 joint memorandum  
16 regarding the settlement conference. Now, that memorandum  
17 reads, after discussion of their respective positions and  
18 assessments of the proceeding, the parties concluded that this  
19 matter could not be settled. I, of course, honor your efforts  
20 and respect your positions. It's Commission policy -- and the  
21 reason that that docu -- that those paragraphs are in the pre-  
22 hearing is it is Commission policy to encourage settlement and  
23 that's the reason I included them but I think I've made it  
24 pretty clear from designation right up until now that the  
25 sands of time have just about run out. You either settle or

1 | try the case so I have accepted your judgement and we're going  
2 | to try the case and is there anything that you want to say  
3 | about paragraphs 11 through 13, Mr. Elehue Freeman?

4 |           MR. FREEMON: No, Your Honor.

5 |           JUDGE MILLER: All right, Ms. Lucille K. Freeman  
6 | cannot make a statement because she isn't here. Mr. Jacoby.

7 |           MR. JACOBY: We have nothing to add, Your Honor.

8 |           JUDGE MILLER: All right, paragraphs 14 through 17  
9 | set up for the procedures for preparing marginally and  
10 | exchanging exhibits. Are you prepared to exchange in all your  
11 | direct case exhibits today, Mr. Elehue Freeman?

12 |           MR. FREEMON: Yes.

13 |           JUDGE MILLER: Do they comply with paragraph 14  
14 | through 17 of that pre-hearing order?

15 |           MR. FREEMON: I honestly don't know, I've tried.

16 |           JUDGE MILLER: Well, don't you think -- don't you  
17 | think you ought to know?

18 |           MR. FREEMON: Again, I'm not a lawyer, it's --

19 |           JUDGE MILLER: Well, I didn't -- I -- it doesn't  
20 | make any difference.

21 |           MR. FREEMON: I -- no, I take -- I don't know.

22 |           JUDGE MILLER: You don't need to make that statement  
23 | to me, I'm aware of it, I've been aware of it from the very  
24 | beginning of the case, you have elected to proceed pro se, you  
25 | are responsible for complying with all the procedures, so it



1 | doesn't -- so when you say to me you're -- I'm not a lawyer,  
2 | it doesn't make -- it doesn't phase me one bit and I don't  
3 | care except you are responsible. Now, is the answer, you  
4 | don't know whether your direct case exhibits comply with  
5 | paragraphs 14 through 17 of the pre-hearing order, is that  
6 | your -- is that your statement?

7 |           MR. FREEMON: I don't know.

8 |           JUDGE MILLER: Okay, does each -- well, does each  
9 | exhibit contain the affidavit of a sponsoring witness?

10 |           MR. FREEMON: It has an affidavit and it -- if it  
11 | needed it.

12 |           JUDGE MILLER: Now, saving two copies of your  
13 | exhibits to give to the court reporter at the upcoming  
14 | November 28, 1994 evidentiary admission session, proceed with  
15 | your exchange, give -- in other words, what I'm saying to you  
16 | is, give one copy to Mr. Nichols, give a copy to Mr. Jacoby,  
17 | and give a copy to myself, of your exhibits.

18 |           MR. FREEMON: I guess I was unclear of how many  
19 | copies I was supposed to have, that's the only part --

20 |           JUDGE MILLER: I don't know understand your  
21 | sentence.

22 |           MR. FREEMON: I didn't understand how many copies I  
23 | was supposed to prepare, I --

24 |           JUDGE MILLER: Did you try to find out?

25 |           MR. FREEMON: Yes, I did.

1 JUDGE MILLER: Who'd you try to find out from?

2 MR. FREEMON: I did call the FCC and they said to  
3 have at least a copy for you and at least a copy for the FCC.  
4 I did make sure --

5 JUDGE MILLER: Did you --

6 MR. JACOBY: We don't get one.

7 JUDGE MILLER: What happens, aren't you partners any  
8 more?

9 MR. FREEMON: Well, basically the copies that I have  
10 they already have but the copies I felt that they didn't have  
11 I made three.

12 JUDGE MILLER: No, well, let -- okay, so let's make  
13 an understanding, Mr. --

14 MR. FREEMON: So let me change --

15 JUDGE MILLER: -- so you -- so we're clear, the mere  
16 fact that we have documents in our possession from the pre-  
17 designation stage, doesn't mean that we have exhibits.

18 MR. FREEMON: Okay, I --

19 JUDGE MILLER: This is the day, this is the day  
20 where you present officially what you are -- what you intend  
21 to rely on to meet your burden of proof and your burden of  
22 proceeding under all six issues including your claim for  
23 damages. Now, if you're ready to give Mr. Nichols a copy,  
24 Mr. Jacoby a copy and myself a copy, let's go, now's your  
25 chance. Here it is.

1 MR. FREEMON: Let me just give you what I have. I'd  
2 like to start with Exhibit 4 and that way -- let me start  
3 there. This is the --

4 JUDGE MILLER: No, give it to us, physically give us  
5 the exhibits.

6 MR. FREEMON: Oh, okay, I don't have to say  
7 anything, okay.

8 JUDGE MILLER: Do you have three copies of each of  
9 the things that you have, Mr. Freemon, maybe I can help you  
10 out a little.

11 MR. FREEMON: I have three copies of the medical,  
12 three copies of this one and three copies of this one, I'm  
13 just looking for a third copy of Exhibit 1, that's the only  
14 one I don't have and that was my formal complaint.

15 JUDGE MILLER: Okay, now that formal complaint you  
16 have packaged up as an exhibit.

17 MR. FREEMON: Yes.

18 JUDGE MILLER: And do you have one copy of it?

19 MR. FREEMON: I have two copies, I thought I had a  
20 third but I guess not.

21 JUDGE MILLER: Well, you know, let me give you a --  
22 I don't want to try your case for you, but, you know, you  
23 ought to have at least six copies of this stuff. You ought to  
24 have a copy for yourself, you know, that's pretty important.  
25 You ought to have a copy to give to each of your opponents and

1 then you ought to have a couple of copies -- two copies when  
2 we get to the evidentiary admission session so that you can  
3 formally identify those exhibits and offer them into evidence.  
4 I can see -- there -- I don't know how to make it any clearer,  
5 exchange what you have and I'm going to have to make a record  
6 comment that -- have you given any -- you haven't given  
7 anything to anybody, have you, Mr. Freemon?

8 MR. FREEMON: No, let me --

9 JUDGE MILLER: Now, what do you have, a total of  
10 three exhibits you're going to present?

11 MR. FREEMON: One to each person --

12 JUDGE MILLER: No, no, that you're going to have a  
13 total of -- are you going to have a total of three exhibits,  
14 is that what you were going to rely on?

15 MR. FREEMON: Four.

16 JUDGE MILLER: Four, how about letting us know what  
17 you're doing?

18 MR. FREEMON: I'm sorting it so everyone will have  
19 each exhibit.

20 JUDGE MILLER: All right, give the -- Mr. Nichols  
21 his packet and give Mr. Jacoby his packet and if you got left  
22 over, give me a packet because I'm going to have to rule on  
23 them. Now, have you given me a total package, is this a full  
24 package, Mr. Freemon?

25 MR. FREEMON: Yes.

1 JUDGE MILLER: Let record reflect that he says he's  
2 given me a full package.

3 MR. JACOBY: Mr. Freemon, if I may, I'm going to ask  
4 the question that His Honor asked, am I receive -- have I  
5 received a full package?

6 MR. FREEMON: Yes, you have.

7 MR. JACOBY: Thank you.

8 JUDGE MILLER: All right.

9 MR. JACOBY: In our view, Mr. Nichols is the person  
10 who needs at least the three parties immediately, although  
11 he's obviously entitled, however, Your Honor, --

12 JUDGE MILLER: Well, no, the point is that if you  
13 don't have enough copies to give four of them to  
14 Mr. Nichols --

15 MR. FREEMON: Yes.

16 JUDGE MILLER: -- get it done and get it -- anything  
17 that's missing get done and get to him.

18 MR. FREEMON: Yes, I gave him four exhibits as --  
19 all -- four exhibits --

20 JUDGE MILLER: Okay, now, do you have something for  
21 yourself, I mean --

22 MR. FREEMON: I can --

23 JUDGE MILLER: -- can you get --

24 MR. FREEMON: Yes, yes.

25 JUDGE MILLER: Okay, all right.

1 MR. FREEMON: I just don't have them here.

2 JUDGE MILLER: Okay, well, but come the 28th you  
3 better have two for the court reporter, two copies of each of  
4 these. All right --

5 MR. FREEMON: Did I state that all parties have four  
6 exhibits?

7 JUDGE MILLER: All three parties have been given  
8 four exhibits. Now, Mrs. Freemon cannot exchange any exhibits  
9 today because she's not here. Mr. Jacoby, are you prepared to  
10 exchange your direct case exhibits today?

11 MR. JACOBY: Your Honor, AT&T is prepared but may I  
12 make an observation, I have only briefly reviewed the four  
13 pieces of material Mr. Freemon gave me.

14 JUDGE MILLER: I under --

15 MR. JACOBY: It does not appear to include any  
16 written direct testimony pursuant to paragraph 14 of Your  
17 Honor's -- sworn written direct, I might add, pursuant to  
18 paragraph 14. Now, we have some sworn written direct with  
19 respect to our affirmative case, but, Your Honor, we feel  
20 that, you know, while of course we're more than willing to  
21 comply with your directive, it does place us in a -- unless  
22 Mr. Freemon does not intend to present any sworn testimony and  
23 really wants to go on the basis of these four documents, that  
24 we are being prejudiced again by showing him our case and he's  
25 not showing me his case.

1 JUDGE MILLER: Well, let me state -- say this, all  
2 right, I -- I think you're -- like Mark Twain said about his  
3 death, it was greatly exaggerated. You have deposed  
4 Mr. Freemon and you know that if there's any written testimony  
5 that he tries to place into this record at this juncture that  
6 contradicts anything he said at that deposition you're going  
7 to lay it to him -- as I would expect you to.

8 MR. JACOBY: Well, we'll do our best, Your Honor.

9 JUDGE MILLER: No, I -- you understand what I'm  
10 saying, I don't -- I'm sorry he didn't prepare any written  
11 direct testimony into evidence.

12 MR. JACOBY: Right, so he intends to, I suppose, to  
13 provide a oral direct which we have to do live cross --  
14 immediately --

15 JUDGE MILLER: Well, he's going to have to ask for  
16 permission to do that and in the mean time.

17 MR. JACOBY: Well, all right, Your Honor, we will  
18 oppose that, I might add, Your Honor, with -- at the  
19 appropriate time.

20 JUDGE MILLER: Well, I understand, all right.

21 MR. FREEMON: All right.

22 MR. JACOBY: Your Honor, we are prepared to exchange  
23 the necessary binders.

24 JUDGE MILLER: Proceed.

25 MR. JACOBY: Your Honor, if the record will reflect

1 I'm handing up to you a white binder containing our direct  
2 case.

3 JUDGE MILLER: All right, and what's the -- just --  
4 it doesn't need to be a third -- of 19 exhibits?

5 MR. JACOBY: There are a total of 19 marked  
6 exhibits, there are also, Your Honor, citations to certain  
7 exhibits in the deposition transcripts which are on file with  
8 the Commission, they aren't included in the binder but we will  
9 make a courtesy set available to Your Honor and to the other  
10 parties.

11 JUDGE MILLER: If it's -- if we get as far as the  
12 hearing, it'll be valuable, you know.

13 MR. JACOBY: Well, no, we intend to have that well  
14 before the evidentiary admission session, Your Honor so that  
15 you'll have an opportunity to have those in time.

16 JUDGE MILLER: All right, all right.

17 MR. JACOBY: I'm now tendering to Mr. Freemon a copy  
18 of the same binder and to Mr. Nichols.

19 JUDGE MILLER: Now, those -- the documents you've  
20 exchanged do comply with paragraphs 14 through 17 of the pre-  
21 hearing order?

22 MR. JACOBY: Yes, Your Honor, I believe they do.

23 JUDGE MILLER: All right, and where you need an  
24 affidavit or a sponsoring witness, do you have one?

25 MR. JACOBY: Where we have some written direct



1 testimony of some sponsoring witnesses, the other documents  
2 are primarily items from the Commission file for which we have  
3 requested, as you'll see --

4 JUDGE MILLER: Official notice.

5 MR. JACOBY: -- official notice pursuant to Your  
6 Honor's pre-hearing order and the remaining material, as I  
7 indicated before, are deposition exhibits that are cited but  
8 are not included in the binder but we will make those  
9 materials separately available to you along with their  
10 authenticating testimony in the appropriate deponents, you  
11 know, page and line references.

12 JUDGE MILLER: All right, all right, now, let me  
13 state something, Mr. Freemon, listen up. What we've exchanged  
14 today is the direct case. If on cross-examination you have  
15 some documents that you did not exchange today but you want to  
16 use them for purposes of cross-examination, you're perfectly  
17 free to do so along with the proper identification and offer  
18 of those documents. In other words, what you have exchanged  
19 today should have been your direct case. You are -- you  
20 haven't complied with the instructions because you haven't  
21 submitted your direct case in writing, your statements and  
22 you're in trouble, I can tell you right off the bat.  
23 Mr. Jacoby puts it nicely but I'll put it bluntly to you,  
24 you're in trouble. So have you completed your exchange,  
25 Mr. --

1 MR. JACOBY: Yes, it has, Your Honor, thank you.

2 JUDGE MILLER: All right, paragraph 18 sets up the  
3 upcoming November 28, 1994 evidentiary admission session  
4 starting at 8:30 a.m. There each party will formally identify  
5 and offer the direct case exhibits you've exchanged today  
6 starting with your exhibits, Mr. Elehue Freemon since you bear  
7 the burden of proceeding and the burden of proof. I will rule  
8 on any objections to all or a part of those exhibits and  
9 immediately after the evidentiary admission session concludes,  
10 each party will notify the other of the witnesses they need to  
11 cross-examine. That will right at the tail end of the  
12 evidentiary admission session, once you know what's in and  
13 what's out. Now, is this procedure clear, Mr. Elehue Freemon?

14 MR. FREEMON: Yes.

15 JUDGE MILLER: Is it Mrs. -- I can't ask  
16 Mrs. Lucille K. Freemon because she isn't here. Mr. Jacoby,  
17 is the procedures clear?

18 MR. JACOBY: Crystal, Your Honor.

19 JUDGE MILLER: All right, paragraphs 19 through 21  
20 delineate certain pertinent hearing procedures including the  
21 trial Judge's view on rebuttal. I'll tell you now, if you  
22 make a request for a rebuttal, be prepared to tell me exactly  
23 what it is you want to rebut, specifically how you intend to  
24 rebut it and specifically when you are able to present that  
25 rebuttal. Are those procedures clear, Mr. Elehue Freemon?

1 MR. FREEMON: Yes, they are.

2 JUDGE MILLER: Mrs. Lucille K. Freemon can't talk to  
3 you, she's not here. Mr. Jacoby?

4 MR. JACOBY: They are clear, Your Honor.

5 JUDGE MILLER: All right, paragraphs 22 and 23 deal  
6 with extensions of time and the December 12th through 21st  
7 hearing dates. I don't know how -- whether we're going to  
8 need all those dates but I've set them aside and they're  
9 reserved but on the days we're going to meet at 8:30, this is  
10 your last dispensation, Mr. Jacoby, that -- this isn't funny.

11 MR. JACOBY: We won't go to that well too often,  
12 Your Honor.

13 JUDGE MILLER: Yeah, so on that first day of hearing  
14 you probably ought to maybe come up here the day before --

15 MR. JACOBY: Thanks a lot, Your Honor.

16 JUDGE MILLER: Yeah, but we're going to start at  
17 8:30 and we're going to end at 5:30 with an hour for lunch and  
18 in that connection I've discovered that trials take less time  
19 when they are conducted on a full day basis with no  
20 interruptions other than short scheduled breaks in the mid-  
21 morning and mid-afternoon and that hour for lunch that I  
22 talked about. With that -- let's see if I can find this, let  
23 me read you some rules that I've found proved helpful over the  
24 years to having a harmonious hearing as much as hearings can  
25 be harmonious. First, address the bench and not each other,

1 | personal colloquies between counsel cause delays, promote  
2 | confusion and create a generally unhealthy atmosphere. Two,  
3 | treat the ad -- treat your adverse witnesses with fairness and  
4 | respect, be polite, don't confuse robust litigation with  
5 | rudeness, there is no really -- really no need to be abusive  
6 | or offensive. I have found that questions of simply adduced  
7 | facts are probably superior to questions that argue. Rule 3,  
8 | don't argue with a witness, counsel can't testify, the witness  
9 | can so you're bound to lose the argument and the corollary of  
10 | that is, don't write findings and conclusions based on what  
11 | you say. We're going to proceed in docket order so have your  
12 | witnesses ready to go, we're not going to hold up the hearing  
13 | because a witness or witnesses have not arrived yet. Don't  
14 | anticipate because there may be several witnesses ahead of the  
15 | ones you scheduled that you'll have ample time to get them  
16 | here because of that type of witness cushion has a way of  
17 | evaporating. Now, if you people have a need and accommodation  
18 | for some reason for some witness, talk to each other and  
19 | arrange a switch of the witnesses, pull one out of order if  
20 | you have to and then bring the accommodation request to me on  
21 | the record and then in all probability, as long as we're  
22 | moving forward, I'm going to approve it. But don't ask me to  
23 | force the accommodation, you see, because I'm not going to do  
24 | that. Now, in the absence of any accommodation we're going to  
25 | proceed in docket order and with our witnesses. Mr. Freemon,

1 you'll present your witnesses and then when you've -- the  
2 cross-examine and you've had your chance at redirect and those  
3 witnesses are gone we'll then take up AT&T's witnesses on  
4 their affirmative defenses. The problem with accommodation, I  
5 think I can be real clean, you know, people like to have me  
6 accommodate witnesses, but when I accommodate a witness I just  
7 accommodate Jacoby, Nichols, Freemon, the court reporter and  
8 myself so I just assume -- just accommodate the witness and  
9 accommodate us five, you see, and that's the way I try my  
10 cases. We're going to go straight through this hearing  
11 without lapses, there'll be no lengthy recesses while we wait  
12 for witnesses and I think if you keep in mind the trial time  
13 is a limited resource, both bench and bar are responsible for  
14 using that time wisely, a well-prepared trial with competent  
15 counsel practically runs itself, there are few distractions  
16 and interruptions. As a trial Judge, I want each of you  
17 people to have had your day in Court without being hurried or  
18 detained. So then we won't be having any off-the-record  
19 conferences or lobby conferences, trial time is precious so  
20 we'll preserve the hearing time for that purpose. Now, having  
21 said that and since I told you at the beginning, if there was  
22 anything further that you had to bring up today, you were  
23 going to get a chance to do it and now is that time. Do you  
24 have anything further you need to -- that we need to take up  
25 today, Mr. Elehue Freemon?

1 MR. FREEMON: No.

2 JUDGE MILLER: I can't ask Mrs. Lucille Freemon,  
3 she's not here. Mr. Jacoby.

4 MR. JACOBY: AT&T has nothing further, Your Honor,  
5 we will, as you directed, consult with Mr. Freemon after this  
6 hearing about the issue of that deposition admission  
7 admissibility and report to Your Honor promptly.

8 JUDGE MILLER: Yes, because -- I mean, so that when  
9 we hit the evidentiary admission session, we'll know where we  
10 stand.

11 MR. JACOBY: Right, Mr. Nichols, I didn't mean  
12 inadvertently to exclude you from that session.

13 JUDGE MILLER: Do you have anything you believe we  
14 ought to take up today, Mr. Nichols?

15 MR. NICHOLS: No, sir.

16 JUDGE MILLER: Okay, then we stand adjourned until  
17 November 28, 1994 at 9:15 a.m.

18 MR. JACOBY: Thank you, Your Honor.

19 (Whereupon the hearing was adjourned at 10:30 a.m.)  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

Freemon et al. vs. AT&T

**Name**

CC Docket No. 94-89

**Docket No.**

Washington, D.C.

**Place**

November 10, 1994

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 46, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

11/13/94

**Date**

Carolyn E. Zimmer  
Carolyn E. Zimmer, Transcriber  
Free State Reporting, Inc.

11/14/94

**Date**

Kathleen Burnside  
Kathleen Burnside, Proofreader  
Free State Reporting, Inc.

11/14/94

**Date**

Barbara J. Lord  
Barbara J. Lord, Reporter  
Free State Reporting, Inc.

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